

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Net Magan Property Owner One, LP)
Ward 094, Block 200, Parcel 00470) Shelby County
Industrial Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$167,500	2,062,500	2,230,000	892,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 20, 2007 in Memphis, Tennessee. In attendance at the hearing were registered agent Jim Schwalls and Shelby County Property Assessor's representative Rick Middleton, TCA.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 3.44 acre tract improved with a 70,000 square foot warehouse constructed in 1999 located at 5355 Distriplex Farms in Memphis, Tennessee. Subject property had been leased to Metabolife International, Inc. [“Metabolife”]. The property became vacant on December 15, 2005 following Metabolife’s bankruptcy.

The taxpayer contended that subject property should be valued at \$1,960,000. In support of this position, the income approach was introduced into evidence. Like Mr. Middleton's income approach, Mr. Schwalls' income approach initially indicates a value consistent with the current appraisal of subject property. Unlike Mr. Middleton, however, Mr. Schwalls deducted \$274,300 from the indicated value to account for lost rent during an assumed lease-up period of one year.

The assessor contended that subject property should remain valued at \$2,230,000. In support of this position, the income approach was introduced into evidence. In addition, Mr. Middleton's analysis included summaries of comparable sales he argued also support the current appraisal of subject property. Moreover, Mr. Middleton noted that subject property was part of a \$76,000,000 bulk sale of over 30 industrial properties on August 24, 2005. The value allocated to subject property was \$3,570,000. Finally, Mr. Middleton's exhibit (#2) included a document indicating subject property was 100% occupied beginning in April of 2007 and offered for sale at \$4,340,000.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic

and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$1,960,000 in accordance with Mr. Schwalls' analysis.

The administrative judge finds that the income approach should receive greatest weight. Respectfully, the administrative judge finds that Mr. Middleton did not adjust the comparable sales included in his analysis and seeks to rely on events occurring long after the relevant assessment date of January 1, 2006. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3.

With respect to the income approach, the administrative judge finds that the sole issue concerns whether a deduction should be allowed for lost rent during the lease-up period. The administrative judge previously addressed this issue in *Farnsworth Industrial Properties* (Shelby Co., Tax Year 2005). That decision is appended to this order and hereby incorporated by reference in relevant part. For the reasons stated therein, the administrative judge finds such a deduction appropriate. The administrative judge finds that Mr. Schwalls' assumptions were not challenged and his lease-up analysis comports with generally accepted appraisal practices.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$167,500	\$1,792,500	\$1,960,000	\$784,000

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be**


filed within thirty (30) days from the date the initial decision is sent.”

Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24th day of August, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Jim Schwalls
Tameaka Stanton-Riley, Appeals Manager

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Farnsworth Industrial Properties)
Ward 073, Block 102, Parcel A00035) Shelby County
Industrial Property)
Tax Year 2005)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$672,900	\$4,665,700	\$5,328,600	\$2,131,440

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on September 20, 2006 in Memphis, Tennessee. In attendance at the hearing were registered agent Jim Schwalls and Shelby County Property Assessor's representative Rick Middleton, TCA.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an 8.79 acre site improved with three distribution warehouses constructed in 1992 located at 3731 Distriplex in Memphis, Tennessee.

The taxpayer contended that subject property should be valued at \$4,750,000. In support of this position, the income approach was introduced into evidence.

The assessor contended that subject property should be valued at \$5,328,600. In support of this position, the income approach was introduced into evidence. In addition, the assessor sought to rely on the August 24, 2005 sale of subject property for \$5,984,700.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$4,923,700 in accordance with the income approach set forth below.

The administrative judge finds that the August 24, 2005 sale of subject property cannot be considered for two reasons. First, it occurred after the assessment date of January 1, 2005 and is therefore irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals

Commission ruled that “[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumption reasonably made on or before the assessment date have been borne out by subsequent events.” Final Decision and Order at 3. Second, it appears from Mr. Schwalls’ testimony that the sale price was an allocation from a transaction involving the sale of over 30 properties. As seen in other appeals heard along with this appeal, in certain instances even the assessor’s contention of value is far below the price allocated to that particular property.¹

With respect to the income approach, the administrative judge finds that the primary differences between the parties initially concerned their estimates of potential gross income. The administrative judge finds that the parties’ estimates of \$502,770 and \$524,530 establish a reasonable range. The administrative judge finds that the preponderance of the evidence supports adoption of \$515,000. The administrative judge finds such a figure recognizes both what is typical for the market and the fact 90,000 square feet was vacant on January 1, 2005.

The administrative judge finds that the other area of significant disagreement between the parties was Mr. Schwalls’ contention that a deduction of \$225,000 should be made from the stabilized indication of value to account for lost income during the lease-up period for the 90,000 square feet vacant on January 1, 2005.

The administrative judge finds that except for the one adjustment discussed below, Mr. Schwalls’ lease-up analysis comports with generally accepted appraisal practices. For example, in *Kailes v. Josephine County Assessor* (TC-MD 982945C, 000613C) the Oregon Tax Court approved a similar analysis reasoning in pertinent part at page 6 of its opinion as follows:

Lost Rent

The Appraisal of Real Estate discusses rent loss in the context of a proposed multi-tenant project that is not fully leased. In that situation, the authors note that “[t]he appraiser should account for the impact of the rent lost while the building is moving toward stabilized occupancy.” *Id.* At 590. Several approaches are set forth regarding how the appraiser can account for the loss of rent. One recommended technique is to “discount the net income loss during lease-up, which is then deducted from the value of the property at stabilized occupancy.” *Id.* Both of Plaintiff’s appraisers did just that. The amount each appraiser deducted differed because they used different lease-up periods (one year versus two). The court finds no practical reason why the same approach would not be valid for the subject building with no tenant(s), because each situation presents the same problem. The risk inherent with Plaintiff’s property is accentuated by the fact that it is a one or two tenant property.

¹ For example, Mr. Middleton contended that parcel 073-102-A00040 should be valued at \$1,698,800 based upon the income approach although it sold on August 24, 2005 for a recorded consideration of \$2,239,242.

As such, the absence of a tenant has a dramatic impact on income and, in a market with lengthy lease-ups, a significant impact on value.

As previously indicated, the administrative judge finds one adjustment to Mr. Schwalls' analysis appropriate. The administrative judge finds it reasonable to assume that the lease-up period would conclude prior to January 1, 2006. Accordingly, the administrative judge finds that the \$33,954 deduction made as of January 1, 2006 should be disallowed. This results in an estimate of lost income of \$191,043 rather than \$225,000.

Based upon the foregoing, the administrative judge finds that subject property should be valued in accordance with the following income approach:

Potential Gross Income	\$ 515,000
Less Vacancy & Collection Loss	- 51,500
Effective Gross Income	\$ 463,500
Less Operating Expenses & Reserves	- 41,537
Net Operating Income (NOI)	\$ 421,963
Cap Rate	÷ 8.25%
Indicated Stabilized Value	\$5,114,703
Less Lease-Up	- 191,043
Final Value	\$4,923,660

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$672,900	\$4,250,800	\$4,923,700	\$1,969,480

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:


1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order.

The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of October, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Jim Schwalls
Tameaka Stanton-Riley, Appeals Manager